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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

14 UNITED STATES OF AMERICA, )  
15 Plaintiff, )  
16 v. )  
17 DENNIS CYRUS, JR., )  
18 Defendant. )  
19 \_\_\_\_\_ )

Case No: CR 05 0324 MMC

**UNITED STATES' AMENDED  
APPLICATION FOR AND  
~~PROPOSED~~ ORDER RELEASING  
RESULTS OF DEFENDANT'S  
JUVENILE PROBATION DRUG  
TESTING UNDER 42 CFR §§ 2.1 &  
2.2**

20 The defendant has indicated that he intends to present a defense of voluntary  
21 intoxication to the charges filed against him in the above-captioned case. The United  
22 States has learned that Cyrus was drug tested on a number of occasions as part of the  
23 terms of his juvenile probation in 2002.

24 42 C.F.R. §§ 2.1(b)(2)(C) and 2.2(b)(2)(C) allow a Court to order the release of  
25 patient records related to drug and alcohol abuse respectively upon a showing of good  
26 cause. The United States submits that the aforementioned records are relevant to any  
27 rebuttal the United States may present to Cyrus's claim of voluntary intoxication as they  
28 provide an ongoing record of the types of drugs and alcohol, if any, the defendant may

1 have ingested at a given date during the time he is alleged to have committed the instant  
2 offenses. Accordingly, the Court should order the release of these materials under the  
3 aforementioned provisions.

4 The United States is aware that 42 C.F.R. §§ 2.1(c) and 2.2(c) both prevent the use  
5 of such records to, among other things, “substantiate any criminal charges against a  
6 patient.” However, the regulation indicates that a Court order under §§ 2.1(b)(2)(C) and  
7 2.2(b)(2)(C) overcomes such prohibition, and given that the defense has put the issue of  
8 Cyrus’s potential substance abuse at issue, and given that the government intends only to  
9 present this material in its rebuttal case or at any penalty phase hearing where the issue of  
10 voluntary intoxication is put in issue by the defense, the United States submits that such  
11 disclosure is appropriate.

12  
13 DATED: April 22, 2009

Respectfully submitted,

14 JOSEPH P. RUSSONIELLO  
15 United States Attorney

16 /s/  
17 WILLIAM FRENTZEN  
18 ROBERT DAVID REES  
19 Assistant United States Attorneys

20 **~~PROPOSED~~ ORDER**

21 Pursuant to its authority under 42 C.F.R. §§ 2.1(b)(2)(C) and 2.2(b)(2)(C), which  
22 provide that a Court may order the release of patient records related to drug and alcohol  
23 prognoses, and in light of the defendant’s stated intention to rely on a defense of  
24 voluntary intoxication during the time period he is charged with committing federal  
25 crimes in this case, this Court hereby ORDERS the release of all records, including  
26 results, related to any drug testing performed on Dennis Cyrus, Jr. in 2002 in connection  
27 with San Francisco Juvenile Probation to the Assistant United States Attorneys  
28 prosecuting the above-captioned case and any other employee of the United States

1 Department of Justice who has been assigned to work on the above-captioned case.

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3 DATED: April 22, 2009

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5 HON. MAXINE M. CHESNEY  
6 United States District Judge  
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